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PPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,640	12/14/2001	William R. Matz	36968/265387 9378	
38515	7590 01/07/2005		EXAMINER	
BAMBI FAIVRE WALTERS			OUELLETTE, JONATHAN P	
PO BOX 5743 WILLIAMSBURG, VA 23188		•	ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Display of the provided and the provision of the communication appears on the cover sheet with the correspondence address → Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filled after SIX (b) MONTHS from the mailing date of this communication.  If the period for reply septide above is less than thinty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  If NO period for reply is specified above is less than thinty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  If NO period for reply is specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  If NO period for reply is specified above is less than thirty (30) days, a reply within the meaning date of this communication.  Palliers perply within the section of the mailing date of this communication.  Palliers perply within the section of the mailing date of this communication, and will explicate the application to become ARANDONED (50 U.S., § 133).  An are reply and the mailing date of this communication, even if timely filed, may reduce any carned palent term education. The mailing date of this communication, even if timely filed, may reduce any earned palent term education is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-3,5-24 and 32-41 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  Claim(s) 1-3,5-24 and 32-41 is/are rejected.  7) Claim(s) is/are objected to.  8) Claim(s) 1-3,5-24 and 32-41 is/are rejected.  7) Claim(s) are subject		Application No.	Applicant(s)					
Examiner   Jonathan Ouellette   3629    - The MAILING DATE of this communication appears on the cover sheet with the correspondence address − Period for Reply    A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be sinely filed    If the period or only specified above, the maximum stabulatory period will apply and will expire SX (0) MONTHS from the mailing date of this communication or only specified above, the maximum stabulatory period will apply and will expire SX (0) MONTHS from the mailing date of this communication or period to reply its period above, the maximum stabulatory period will apply and will expire SX (0) MONTHS from the mailing date of this communication. Any reply received by the Office later then the two months after the mailing date of this communication, even if timely filed, may reduce any control period to reply its period to the communication. Any reply received by the Office later then the through after the mailing date of this communication, even if timely filed, may reduce any control period to the stable period of this communication. Any reply received by the Office later then the discontrol after the mailing date of this communication. Any reply received by the Office later then adjustment. See 37 CFR 1.764(b).  Setup 1   Responsive to communication(s) filed on Q5 October 2004.  2a)   Responsive to communication(s) filed on Q5 October 2004.  2a)   This action is FINAL. 2b)   This action is non-final.  3)   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Expander Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)   Claim(s) 1-3.5-24 and 32-41 is/are pending in the application.  4a) Of the above claim(s)   is/are allowed.  5)   Claim(s)   is/are allowed.  6)   Claim(s)   is/are allowed.  6)   C								
Jonathan Ouellette   3629	Office Action Summary			<u> </u>				
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#### **DETAILED ACTION**

## Response to Amendment

1. Claims 4 and 25-31 have been cancelled, and Claims 32-41 have been added; therefore, Claims 1-3, 5-24 and 32-41 are currently pending in application 10/017,640.

## Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 3. <u>Claims 32-34</u> are rejected under 35 U.S.C. 102(e) as being anticipated by Eldering et al. (US 6,457,010 B1).
- 2. As per independent Claims 32-34, Eldering discloses a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber (abstract) comprising: receiving data from a plurality of programming and advertising sources; receiving viewing information associated with the subscriber, the viewing information indicating whether the subscriber viewed real-time data from a source other than the plurality of programming and advertising sources (video, computer content); receiving a subscriber attribute (household profile: Figs.1, 13-14), the

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subscriber attribute comprising data about the subscriber; merging said data from a plurality of programming and advertising sources, said viewing information, and said subscriber attribute to create a subscriber information data store; and analyzing said subscriber information data store to determine said subscriber's desirability in relation to a provider (Abstract, C1, C2)

## Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 4. <u>Claims 1, 6, 10-13, 16-18, 35, 36, and 40-41</u> are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering.
- 5. As per independent Claims 1, 16, 17, and 35, Eldering discloses a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber (Abstract) comprising: receiving data from a plurality of programming and advertising sources; receiving viewing information associated with the subscriber; the viewing information indicating whether the subscriber viewed data from at least one of the programming and advertising sources and a source other than the plurality of programming and advertising sources (video); receiving a subscriber attribute (household information), the subscriber attribute comprising data about the subscriber (Figs.1, 13-14); merging said data from the plurality of programming and advertising sources, said

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viewing information, and said subscriber attribute to create a subscriber information data store; and analyzing said subscriber information data store to determine said subscriber's desirability in relation to a provider (Abstract, C1, C2).

- 6. Eldering fails to expressly disclose wherein said subscriber's desirability (household profile) is used to identify said subscriber to said provider.
- However, Eldering does disclose providing household profile information (which
  includes demographic information and detailed viewing habits) to others who may
  determine if their programming or advertisements are suitable for the subscriber (C1 L3967, C2 L1-7).
- 8. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said subscriber's desirability (household profile) is used to identify said subscriber to said provider in the system disclosed by Eldering, for the advantage of providing a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber, with the ability to increase effectiveness of the system by providing a detailed analysis of specific household viewing habits to third parties (advertisers).
- 9. As per Claim 6, Eldering discloses wherein said subscriber attribute comprises demographic information.
- 10. As per Claims 10 and 36, Eldering discloses wherein said subscriber attribute comprises a purchase.
- 11. As per Claims 11 and 40, Eldering discloses wherein said purchase comprises a purchase of a product, wherein said product complements a product provided by said provider.

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12. As per Claim 12 and 41, Eldering discloses wherein said purchase comprises a purchase of a product, wherein said product competes with a product provided by said provider.

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- 13. As per Claim 13, Eldering discloses wherein said provider comprises a content provider.
- 14. As per Claim 18, Eldering discloses wherein said subscriber attribute database comprises a purchase history database
- 15. Claim 2, 3, 5, 7-9, 14, 15, 19-24, and 37-39 are rejected under 35 U.S.C. 103 as being unpatentable over Eldering in view of Ludtke.
- 16. As per Claim 2, Eldering and Ludtke do not expressly show wherein said subscriber comprises a consumer.
- 17. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of subscriber used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
- 18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have performed the method (computer-readable medium, system) on a consumer subscriber, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber does not patentably distinguish the claimed invention.

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19. As per Claims 3 and 5, Eldering and Ludtke do not expressly show wherein said data from the plurality of programming and advertising sources comprises television programming data or duration information.

- 20. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of content-access information used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
- 21. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using television programming data or duration information as the content-access information, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the content-access information does not patentably distinguish the claimed invention.
- 22. As per Claims 7, 8, 37, and 38, Eldering and Ludtke do not expressly show wherein said demographic information comprises a profession of said subscriber or a property ownership history of said subscriber.
- 23. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable

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medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of demographic information used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

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- 24. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a profession of said subscriber or a property ownership history of said subscriber as the demographic information, because such information does not functionally relate to the steps in the method claimed and because the subjective interpretation of the demographic information does not patentably distinguish the claimed invention.
- 25. As per Claims 9 and 39, Eldering and Ludtke do not expressly show wherein said subscriber attribute comprises a questionnaire response.
- 26. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of subscriber attribute used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

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27. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a questionnaire response as a subscriber attribute, because such an attribute does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber attribute does not patentably distinguish the claimed invention.

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- 28. As per Claims 14 and 15, Eldering and Ludtke do not expressly show wherein said content provider comprises a programming provider or an advertising provider.
- 29. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of content provider used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
- 30. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a programming provider or a advertising provider as a content provider, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the content provider does not patentably distinguish the claimed invention.

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31. As per Claim 19, Eldering and Ludtke do not expressly show wherein said purchase history database comprises a credit card database.

- 32. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of purchase history database used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
- 33. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a credit card database as a form of purchase history database, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the purchase history database does not patentably distinguish the claimed invention.
- 34. As per Claims 20 and 21, Eldering and Ludtke do not expressly show wherein said subscriber attribute database comprises a property ownership database or a survey results database.
- 35. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said

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subscriber as a desirable subscriber would be performed regardless of the type of subscriber attribute database used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPO2d 1031 (Fed. Cir. 1994).

- 36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a property ownership database or a survey results database as a subscriber attribute, because such an attribute does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber attribute database does not patentably distinguish the claimed invention.
- 37. As per Claims 22-24, Eldering and Ludtke do not expressly show wherein said data analyzer comprises a report creator, a multidimensional database, or a data-mining application.
- 38. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of data analyzer used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

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39. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a report creator, a multidimensional database, or a data-mining application as a data analyzer, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data analyzer does not patentably distinguish the claimed invention.

#### Response to Arguments

- 40. Applicant's arguments filed 10/5/2004, with respect to Claims 1-3, 5-24 and 32-41, have been considered but are most in view of the new ground(s) of rejection.
- 41. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
- 42. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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#### Conclusion

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (703) 605-0662. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

- 44. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-3597 for After Final communications.
- 45. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.

SUPERVISORY PATENT EXAMINER

1.3 JULIOSY CENTER 3600

December 28, 2004